

## Securities and Exchange Commission

## § 230.800

will not be integrated with offerings exempt under other provisions of the Act, even if both transactions occur at the same time.

8. Securities acquired in a rights offering under § 230.801 are “restricted securities” within the meaning of § 230.144(a)(3) to the same extent and proportion that the securities held by the security holder as of the record date for the rights offering were restricted securities. Likewise, securities acquired in an exchange offer or business combination subject to § 230.802 are “restricted securities” within the meaning of § 230.144(a)(3) to the same extent and proportion that the securities tendered or exchanged by the security holder in that transaction were restricted securities.

9. Section 230.801 does not apply to a rights offering by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company. Section 230.802 does not apply to exchange offers or business combinations by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

### § 230.800 Definitions for §§ 230.800, 230.801 and 230.802.

The following definitions apply in §§ 230.800, 230.801 and 230.802.

(a) *Business combination.* *Business combination* means a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of security holders of one or more of the participating companies. It also includes a statutory short form merger that does not require a vote of security holders.

(b) *Equity security.* *Equity security* means the same as in § 240.3a11-1 of this chapter, but for purposes of this section only does not include:

(1) Any debt security that is convertible into an equity security, with or without consideration;

(2) Any debt security that includes a warrant or right to subscribe to or purchase an equity security;

(3) Any such warrant or right; or

(4) Any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.

(c) *Exchange offer.* *Exchange offer* means a tender offer in which securities are issued as consideration.

(d) *Foreign private issuer.* *Foreign private issuer* means the same as in § 230.405 of Regulation C.

(e) *Foreign subject company.* *Foreign subject company* means any foreign private issuer whose securities are the subject of the exchange offer or business combination.

(f) *Home jurisdiction.* *Home jurisdiction* means both the jurisdiction of the foreign subject company’s (or in the case of a rights offering, the foreign private issuer’s) incorporation, organization or chartering and the principal foreign market where the foreign subject company’s (or in the case of a rights offering, the issuer’s) securities are listed or quoted.

(g) *Rights offering.* *Rights offering* means offers and sales for cash of equity securities where:

(1) The issuer grants the existing security holders of a particular class of equity securities (including holders of depositary receipts evidencing those securities) the right to purchase or subscribe for additional securities of that class; and

(2) The number of additional shares an existing security holder may purchase initially is in proportion to the number of securities he or she holds of record on the record date for the rights offering. If an existing security holder holds depositary receipts, the proportion must be calculated as if the underlying securities were held directly.

(h) *U.S. holder.* *U.S. holder* means any security holder resident in the United States. To determine the percentage of outstanding securities held by U.S. holders:

(1) Calculate percentage of outstanding securities held by U.S. holders as of the record date for a rights offering, or 30 days before the commencement of an exchange offer or the solicitation for a business combination.

(2) Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are

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the subject of the exchange offer, business combination or rights offering, such as warrants, options and convertible securities. Exclude from those calculations securities held by persons who hold more than 10 percent of the subject securities in an exchange offer, business combination or rights offering, or that are held by the offeror in an exchange offer or business combination;

(3) Use the method of calculating record ownership in Rule 12g3-2(a) under the Exchange Act (§ 240.12g3-2(a) of this chapter), except that your inquiry as to the amount of securities represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in the United States, the subject company's jurisdiction of incorporation or that of each participant in a business combination, and the jurisdiction that is the primary trading market for the subject securities, if different from the subject company's jurisdiction of incorporation;

(4) If, after reasonable inquiry, you are unable to obtain information about the amount of securities represented by accounts of customers resident in the United States, you may assume, for purposes of this provision, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

(5) Count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to you indicates that the securities are held by U.S. residents.

(i) *United States.* *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

### § 230.801 Exemption in connection with a rights offering.

A rights offering is exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e), so long as the following conditions are satisfied:

(a) *Conditions.*—(1) *Eligibility of issuer.* The issuer is a foreign private issuer on the date the securities are first offered to U.S. holders.

(2) *Limitation on U.S. ownership.* U.S. holders hold no more than 10 percent of the outstanding class of securities that is the subject of the rights offering (as determined under the definition of "U.S. holder" in § 230.800(h)).

(3) *Equal treatment.* The issuer permits U.S. holders to participate in the rights offering on terms at least as favorable as those offered the other holders of the securities that are the subject of the offer. The issuer need not, however, extend the rights offering to security holders in those states or jurisdictions that require registration or qualification.

(4) *Informational documents.* (i) If the issuer publishes or otherwise disseminates an informational document to the holders of the securities in connection with the rights offering, the issuer must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination. If the issuer is a foreign company, it must also file a Form F-X (§ 239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(ii) The issuer must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the home jurisdiction.

(iii) If the issuer disseminates by publication in its home jurisdiction, the issuer must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(5) *Eligibility of securities.* The securities offered in the rights offering are equity securities of the same class as the securities held by the offerees in the United States directly or through American Depositary Receipts.

(6) *Limitation on transferability of rights.* The terms of the rights prohibit transfers of the rights by U.S. holders except in accordance with Regulation S (§ 230.901 through § 230.905).

(b) *Legends.* The following legend or an equivalent statement in clear, plain